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No. 97-1982

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

IN RE PETER FRANCIS GERACI,

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

Respondent incorrectly states that Petitioner does not "dispute that 11 U.S.C. 329 provides the relevant legal standard of reasonableness for evaluating his fees" (Brief in Opposition, 5-6). Section 329 is not a legal standard; it is only a source of authority. It merely allows the court to determine the reasonableness of fees and to order return of any excessive fees, without defining the word "reasonableness." To say that § 329 provides a legal standard amounts to saying that the standard for determining "reasonableness" is "reasonableness."

One should resort to legislative history "where the face of the [statute] is inescapably ambiguous." *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395-396 (1951) (Jackson, J., concurring). *See also Oklahoma v. New Mexico*, 501 U.S. 221, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991); *Garcia v. United States*, 469 U.S. 70, 76, 105 S. Ct. 479, 83 L. Ed. 2d. 472 (1984) (In surveying legislative history the Court has repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which "[represent] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation"). This is why, in an effort to discern the meaning of "reasonableness" for purposes of § 329, it is important to consider the congressional discussion about the related sections such as § 330, made applicable to § 329 by the Seventh Circuit in *In the Matter of Wiredyne, Inc.*, 3 F.3d 1125 (7th Cir. 1993). Both the Bankruptcy Code itself and the related legislative history evince a clear congressional intent that the reasonableness of bankruptcy attorney's fees must be judged by the compensation for

nonbankruptcy attorneys, not the fees charged by competitors, as the lower courts held.

Second, the lower courts' rulings conflict with the long line of cases in the Seventh Circuit holding that the reasonableness of attorney's fees is determined by the market, not by the judge's personal opinion of the value of an attorney's service. *See, e.g., Matter of Continental Illinois Securities Litigation*, 962 F.2d 566 (7th Cir. 1992); *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993); *Barrow v. Falck*, 11 F.3d 729, 732 (7th Cir. 1993); *Tolentino v. Friedman*, 46 F.3d 645, 652 (7th Cir. 1995).

Third, this petition is not just about "pure error review" in a particular case (Brief in Opposition at 6). As Congress pointed out, ensuring fair compensation for bankruptcy attorneys is critical to the smooth, efficient and expeditious operation of the bankruptcy system. H.R. Rep. No. 95-595, at 329-30, 95th Cong., 1st Sess. 330 (1977); *reprinted in* 1978 U.S.C.C.A.N. at 6286. This petition was filed in the midst of a dangerous nationwide trend to erode such policy, and therefore is of national significance. *See In re Yates*, 217 B.R. 296 (Bankr. N.D. Okla. 1998). This case is about judges rewriting the statute to discourage debtors' attorneys rather than encourage them as dictated by Congress. The case provides the Court with an opportunity to reverse that trend and ensure compliance with the Code and the underlying congressional policy.

WHEREFORE, Petitioner requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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